

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
2 STATE OF MONTANA, IN AND FOR THE COUNTY OF LAKE

3
4 CAUSE NO. 9575

5 WILLIAM L. FUNKE and MARCHITA
6 A. FUNKE, husband and wife;
7 HAROLD E. TOWER and VIOLA H.
8 TOWER, husband and wife;
9 GERALD L. NEWGARD and KAROL
10 K. NEWGARD, husband and wife;
11 KEITH W. McCURDY and MYRTLE
12 M. McCURDY, husband and wife;
13 DAVID R. BAUER and KATHLEEN
14 E. BAUER, husband and wife;
15 GEORGE L. TROSPER and ALICE
16 E. TROSPER, husband and wife;
17 EDWARD E. FUNKE and BESSIE
18 M. FUNKE, husband and wife;
19 WILLIAM CHUBB and VIRGINIA
20 CHUBB, husband and wife;
21 RUBEN S. WEGNER and PHYLLIS
22 F. WEGNER, husband and wife;
23 WESLEY T. VERT, SR. and
24 MADGE E. VERT, husband and
25 wife; RICHARD L. FUNKE and
26 VERONICA S. FUNKE, husband
27 and wife; ERNEST W. DICKSON
28 and LESLEE A. DICKSON, husband
29 and wife; LAURENS W. EDWARDS
30 and ELIZABETH L. EDWARDS,
31 husband and wife; ROBERT S.
32 FOUTY and HEATHER J. FOUTY,
husband and wife; and GERALD
L. GATES and LAUREL M. GATES,
husband and wife; and THOMAS
E. FUNKE and PATRICIA A. FUNKE,
husband and wife;

Plaintiffs,

-vs-

BOARD OF COUNTY COMMISSIONERS,
LAKE COUNTY MONTANA and individual
members DONALD A. CORRIGAN, WILSON
A. BURLEY and ROBERT STRONG; LAKE
COUNTY REFUSE DISPOSAL DISTRICT,
DONALD A. CORRIGAN, CHAIRMAN and
DEPARTMENT OF HEALTH AND ENVIRON-
MENTAL SCIENCES, STATE OF MONTANA,

Defendants.

DEC 16 1976

MOTION

COMES NOW Plaintiffs above-named and move this Honorable
Court to amend its Findings of Fact, Conclusions of Law and
Judgment as follows:

1 Findings of Fact

2 Add as a finding of fact, paragraph IX:

3 That the Defendant Department of Health and
4 Environmental Sciences of the State of Montana utilized a
5 check-off list as its preliminary environmental review (PER).

6 Conclusions of Law

7 Substitute the following Conclusions:

8 1. That Defendant Lake County has a clear legal duty,
9 pursuant to RCM 1947 Sec. 69-4005, to draw up an operation
10 plan for a proposed sanitary landfill site and submit the same
11 to the Department of Health and Environmental Sciences, State of
12 Montana, with their application to this department for site
13 approval.

14 2. That Defendant Lake County failed to perform the clear
15 legal duty to draw up an operation plan for a proposed
16 Sanitary Landfill Site.

17 3. That the Defendant Department of Health and Environment-
18 al Sciences, State of Montana, had a clear legal duty prusuant
19 to Montana Administrative Code, Sec. 16-2. 14 (2)-Sl4100 (5)
20 to obtain and approve an operation plan for any proposed
21 sanitary landfill site, as a pre-condition of their site approval.

22 4. That the Defendant Department of Health and
23 Environmental Sciences, State of Montana, failed to perform
24 the clear legal duty to obtain and approve an operation plan
25 as a pre-condition of their site approval.

26 5. That the Defendant Department of Health and Environmen-
27 tal Sciences, State of Montana, failed to perform the clear
28 legal duty to prepare a valid preliminary environmental review
29 which is defined as a written analysis in their own regulations.

30 6. That the Defendant Lake County Board of Health had a
31 clear legal duty, pursuant to RCM 1947 Sec. 69-4005 to obtain
32 site approval from the Department of Health and Environmental

1 Sciences, State of Montana, prior to their issuance of a
2 Refuse Disposal Site License.

3 7. That the Lake County Board of Health failed to
4 perform the clear legal duty to obtain site approval from the
5 Department of Health and Environmental Sciences, State of
6 Montana, prior to their issuance of a Refuse Disposal Site
7 License.

8 Substituting in lieu of the Court's Order the following:

9 ORDER

10 From the foregoing Findings of Fact and Conclusions of
11 Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

12 1. That the Defendant, Department of Health and
13 Environmental Sciences of the State of Montana, be and is
14 hereby enjoined from approving the sanitary landfill dumpsite
15 in Section 18, Township 22 North, Range 20 West of the Montana
16 Principal Meridian, as is more particularly described in the
17 application of the Defendant, Board of County Commissioners of
18 Lake County, Montana, for disposal of Class II waste until such
19 time as the Defendant Department of Health and Environmental
20 Sciences, State of Montana, prepares a valid Preliminary
21 Environmental Review in compliance with the first Writ of
22 Mandate hereinafter set forth, and until such time as Solid
23 Waste Management Bureau of the State of Montana Department of
24 Health and Environmental Sciences complies with the second
25 Writ of Mandate hereinafter set forth.

26 2. That the Defendants Board of County Commissioners of
27 Lake County, Montana, and the Lake County Refuse Disposal
28 District are enjoined from utilizing the site proposed and
29 more particularly described in Defendant's application to the
30 Department of Health and Environmental Sciences of the State of
31 Montana, for approval for the disposal of Class II waste
32 until they comply with the third and fourth Writs of Mandate
as hereinafter set forth.

WRITS OF MANDAMUS

1. That the Defendant Department of Health and Environmental Sciences properly prepare a valid Preliminary Environmental Review which conforms to the definition set out in its own regulations, i.e., a written analysis.

2. That the Defendant Department of Health and Environmental Sciences, State of Montana, obtain an operation plan from an applicant requesting site approval for a proposed Sanitary Landfill site and approve same prior to site approval.

3. That the Defendant Lake County prepare an operation plan for the proposed sanitary landfill site and submit same together with their application for site approval to the Department of Health and Environmental Sciences, State of Montana.

4. That the Defendant Lake County as a pre-condition to issuance of a license for a refuse disposal site first obtain site approval from the Department of Health and Environmental Sciences, State of Montana.

5. That the Plaintiffs' recover from the Defendants Department of Health and Environmental Sciences, State of Montana, and Lake County, and not against the commissioners of Lake County or the chairman of the Refuse Disposal District, individually, their damages, including a reasonable attorneys' fee, (the sum to be determined by the Court, together with costs.

CHRISTIAN, McCURDY, INGRAHAM & WOLD

BY: Donald K. Polson
Attorneys for Plaintiffs
Professional Center Building
Polson, Montana

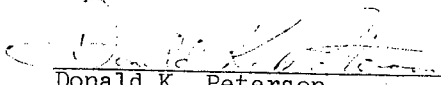
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

CERTIFICATE OF SERVICE

I, DONALD K. PETERSON, one of the resident attorneys for the Plaintiffs in the above-entitled action, do hereby certify that I caused service of the within Motion and Memorandum in Support of Plaintiffs' Post Trial Motion to be made on the 13th day of December, 1976, upon the Defendant by causing a copy thereof to be mailed in the United States Mails, postage prepaid, on the date stated addressed as follows:

Richard P. Heinz
County Attorney
Lake County Courthouse
Polson, Montana Attorney for Lake County

G. Steven Brown
Special Assistant Attorney General
1424 Ninth Avenue
Department of Health and Environmental Sciences
Helena, Montana
Attorneys for Department of
Health and Environmental Sciences


Donald K. Peterson